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Application No.	Ref.	Date
05 024 974.7 - 2213	P22344EP-D1/RMG PCT	05.12.2008
Applicant: ARTHROCARE CORPORATION		

Communication pursuant to Article 94(3) EPC

The examination of the above-identified application has revealed that it does not meet the requirements of the European Patent Convention for the reasons enclosed herewith. If the deficiencies indicated are not rectified the application may be refused pursuant to Article 97(2) EPC.

You are invited to file your observations and insofar as the deficiencies are such as to be rectifiable, to correct the indicated deficiencies within a period

of 4 months

from the notification of this communication, this period being computed in accordance with Rules 126(2) and 131(2) and (4) EPC. One set of amendments to the description, claims and drawings is to be filed within the said period on separate sheets (R. 50(1) EPC).

Failure to comply with this invitation in due time will result in the application being deemed to be withdrawn (Art. 94(4) EPC).

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Kurze, Volker
Primary Examiner
For the Examining Division

Enclosure(s): 3 page/s reasons (Form 2906)
US5697909, US5810764, WO9743971, WO9826724, US5174304

The examination is being carried out on the **following application documents:**

Description, Pages

3, 4, 6, 8, 13-71	as originally filed			
2, 5, 7, 9-12	received on	28.09.2007	with letter of	26.09.2007

Claims, Numbers

1-16	received on	23.06.2008	with letter of	23.06.2008

Drawings, Sheets

1/28-28/28	as originally filed

1. The following documents are cited by the Examiner (see Guidelines C-VI, 8.2 and 8.3). Copies of the documents are annexed to the communication and the numbering will be adhered to in the rest of the procedure:

   D5: US-A-5 697 909
   D6: US-A-5 810 764
   D7: WO 97/43971 A
   D8: WO 98/26724 A
   D9: US-A-5 174 304

2. The present application does not meet the requirements of Article 52(1) EPC, because the subject-matter of claim 1 does not involve an inventive step in the sense of Article 56 EPC.

   The document D5 is regarded as being the closest prior art to the subject-matter of claim 1, and discloses (the references in parentheses applying to this

document):

A system for removing hardened material from a target site within a patient (abstract, and col.5, l.47-48), the system comprising:
an electrosurgical instrument having a shaft with a proximal end, a distal end and one or more active electrodes at the distal end of the shaft (col.6, l.5-7);
a return electrode positioned on the shaft spaced from the active electrode (col.10, l.8-9);
a source of electrically conductive fluid (col.4, l.36-40);
a high frequency power supply for applying a high frequency voltage between the active and return electrodes (col.3, l.43);
wherein the electrically conductive fluid is saline (col.7, l.26).

The power supply of D5 is adapted to produce an electric field to create from electrically conductive fluid at the target site an ionised fluid plasma having energy levels sufficient to ablate or remove hardened material. Although these features are not named explicitly in D5, they define nothing else than what normally happens during high-frequency ablation, cf. D6, abstract, and col.3, l.52-54 and l.66-67. Therefore, it can be concluded that D5 implicitly discloses also these features.

The subject-matter of claim 1 therefore differs from the disclosure of D1 in that the saline has a sodium chloride concentration in the range between 3% and 20%.

The underlying technical problem is how to improve the conductivity of the electrolyte irrigant at the treatment site.

However, the differentiating features have already been employed for the same purpose in a similar device, see document D7, page 30, lines 32-34, or D8, p.79, l.22-26, or D9, col.6, l.28-34. It would be obvious to the person skilled in the art, namely when the same result is to be achieved, to apply these features with corresponding effect to a device according to document D5, thereby arriving at a device according to claim 1. The subject-matter of claim 1 does therefore not involve an inventive step (Articles 52(1) and 56 EPC).

3. Amended application documents which overcome the abovementioned objections should be filed.

The applicant should also indicate in the letter of reply the ***difference*** of the subject-matter of the new claim vis-à-vis the state of the art (D5) and the significance thereof, i.e. the underlying technical problem which those features of the independent claim which form a contribution over the prior art (D1-D9) solve in an inventive way. In the letter of reply, the applicant is requested to apply the ***problem-solution*** approach for inventive step as outlined in the Guidelines, C-IV, 11.7.

4. In order to facilitate the examination of the conformity of the amended application with the requirements of Article 123(2) EPC, the applicant is requested to clearly ***identify the amendments*** carried out, irrespective of whether they concern amendments by addition, replacement or deletion, and to ***indicate the passages of the application as originally filed*** on which these amendments are based (see the Guidelines E-II, 1).

   If the applicant regards it as appropriate these indications could be submitted in handwritten form on a copy of the relevant parts of the application as filed.